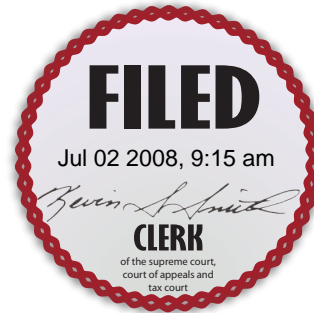


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

RICHARD WILLIAMS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A04-0712-CR-701

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Grant W. Hawkins, Judge
The Honorable Steven Rubick, Commissioner
Cause No. 49G05-0612-FA-250335

July 2, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Richard Williams (“Williams”) was convicted in Marion Superior Court of two counts of Class A felony child molesting. He appeals arguing that the evidence is insufficient to support his convictions. We affirm.

Facts & Procedural History

Between January 2004 and May 2006, Williams resided with his wife and her daughter, R.E., and his girlfriend and her daughter, A.B., at various motels in Speedway, Indiana. Williams forced R.E. to perform oral sex on him when R.E. was approximately ten years old. Williams told R.E. that he would harm her or her mother if she told anyone about the sexual abuse. A.B. was also approximately ten years old when Williams forced her to perform oral sex on him and submit to oral sex. A.B. saw Williams engage in deviate sexual conduct with R.E., and R.E. also witnessed Williams molesting A.B.

Eventually, R.E. told her mother about the abuse, and her mother sent her to live with her grandparents in northern Indiana. After R.E. moved to her grandparents’ home, Williams allegedly had sexual intercourse with A.B. In 2006, at the age of twelve, A.B. became pregnant. Her pregnancy was reported to the police and A.B. told the officers that she had sex with a person named Chuck. A.B.’s mother eventually sent her to live with her grandparents, also in northern Indiana.

A.B. told her grandmother that Williams molested her. A.B. later told the police that she had sexual intercourse with Williams and one of Williams’s friends. She believed that Williams had impregnated her because he had not used a condom, but his friend had. Genetic testing revealed that Williams did not impregnate A.B.

Williams was charged with five counts of Class A felony child molesting and one count of Class B felony child molesting. A bench trial was held on October 29, 2007. The trial court did not find A.B.'s testimony credible with regard to the allegation that Williams forced her to engage in sexual intercourse. Tr. pp. 72-74. However, the court found Williams guilty of Count II, which alleged that Williams engaged in an act involving the sex organ of A.B., and Count V, which alleged that Williams engaged in an act involving the sex organ of R.E. The court found Williams not guilty of the remaining counts. Williams was sentenced to serve two consecutive terms of twenty years for each Class A felony child molesting conviction, for an aggregate sentence of forty years. Williams appeals.

Discussion and Decision

When we review a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the judgment and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

Williams argues that the evidence is insufficient to support his child molesting convictions. To establish that Williams committed Class A felony child molesting, the State was required to prove that Williams, who was at least twenty-one years of age, performs or submits to sexual intercourse or deviate sexual conduct with a child under fourteen years of age. See Ind. Code § 35-42-4-3 (2004 & Supp. 2007).

Both A.B. and R.E. testified that Williams forced them to perform oral sex on him. Tr. pp. 10, 31. A.B. also testified that Williams touched her vagina with his mouth and hands. Id. at 31. Both girls were approximately ten years old when the molestation occurred. This evidence is sufficient to support Williams's two Class A felony child molesting convictions.

Yet, Williams argues that A.B.'s and R.E.'s testimony was incredibly dubious. The "incredible dubiousity" rule applies "where a sole witness presents inherently contradictory testimony that is equivocal or the result of coercion and there is a complete lack of circumstantial evidence of the defendant's guilt." Thompson v. State, 765 N.E.2d 1273, 1274 (Ind. 2002). "Application of this rule is rare and the standard to be applied is whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it." Love v. State, 761 N.E.2d 806, 810 (Ind. 2002).

Both R.E. and A.B. each testified that she witnessed Williams's molestation of the other. Tr. pp. 11, 32. Consequently, the incredible dubiousity rule does not apply as it is implicated only where a sole witness presents inherently contradictory testimony. See Whedon v. State, 765 N.E.2d 1276, 1278 (Ind. 2002). Moreover, we cannot say that the A.B.'s and R.E.'s testimony was so equivocal or dubious that no reasonable person could believe it.¹

¹ Although the trial court questioned A.B.'s credibility with regard to the allegation that Williams forced her to engage in sexual intercourse, the court concluded that, based on A.B.'s testimony and the corroboration of her testimony by R.E., Williams had engaged in sexual deviate conduct with A.B. on at least one occasion. Tr. pp. 73-74.

For all of these reasons, we conclude that the evidence is sufficient to support Williams's Class A felony child molesting convictions.

Affirmed.

MAY, J., and VAIDIK, J., concur.